

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 18 CR 3475 WJ

ROBERT DUNSWORTH,

Defendant.

**8<sup>th</sup> UNOPPOSED MOTION TO CONTINUE TRIAL  
AND MOTION DEADLINES**

NOW COMES the defendant, Robert Dunsworth, by and through his counsel, Irma Rivas, Assistant Federal Public Defender, and moves the Court to continue the trial set for May 4, 2020.

As grounds for this request, counsel states:

1. Under the Speedy Trial Act, a trial must commence within seventy days of the Defendant's first appearance in District Court, the filing of an Information, or the return of an Indictment, whichever is later. 18 U.S.C. § 3161, subd. [c][1]. However, some delay can be excluded from this seventy-day requirement if the Defendant files pre-trial motions, if the Defendant is subjected to other, related proceedings, or if the District Court determines that the ends of justice will be served by granting the requested continuance. 18 U.S.C. § 3161, subd. [h][1][D], [h][1][B] and [h][7][A]. However, in order to justify a continuance based on the ends of justice, the record must contain a detailed explanation for why the mere occurrence of the event identified by the party seeking a continuance results in the need for additional time.

*United States v. Toombs*, 574 F.3d 1262, 1271 (10<sup>th</sup> Cir. 2009).

2. The defendant Mr. Dunsworth was arraigned in this case on January 8, 2019 before United States Magistrate Judge Karen B. Molzen on the charge of Possession of a Firearm by a Felon. Mr. Dunsworth is in the custody of the United States Marshals and housed at the Santa Fe County Adult Detention Center.

3. Discovery in this case was received January 16, 2019. Defense counsel received additional items of discovery on March 11, 2019. Mr. Dunsworth's criminal history required further investigation. On October 22, 2019, this Court granted defendant's motion for a Presentence Investigation Report, Form 13. (Doc. 36), which was completed on January 8, 2020. A motion to suppress was litigated and the court issued its Memorandum Opinion and Order on March 13, 2020. A second motion to suppress statement was filed on March 23, 2020. A response is pending. Parties need additional time to complete litigation of this motion. Further, negotiations continue.

4. Further, this case is scheduled immediately after the current order of the Court, 20-MC-04-15, expires. The Court, Chief District Court Judge William P. Johnson, ordered all criminal jury trials set before May 1, 2020 to be continued. This order also explained that, given the current social distancing requirements, it would be challenging to obtain an adequate cross-section of the community for jury selection as well as to maintain appropriate distance during the trial. It is unlikely that these circumstances will improve by May 4, 2020 to allow a trial to be held. Additionally, although conferences by video are currently permitted, in person visits between defendant and his counsel are not permitted at this time.

5. Mr. Dunsworth agrees, by the filing of this motion, that the period of continuance will not be included in the calculation of time within which this cause must be disposed pursuant to the Speedy Trial Act. 18 U.S.C. §3161(h)(7)(A). Failure to grant such a continuance would

likely result in a miscarriage of justice. *United States v. Toombs*, 574 F.3d 1262, 1268 (10<sup>th</sup> Cir. 2009).

6. Defense counsel also respectfully requests a continuance of motion deadlines.

7. Assigned Special Assistant United States Attorney Thomas Outler does not oppose this continuance.

WHEREFORE, defendant Robert Dunsworth requests that the Court continue the trial of his cause for 60 days, or as long as the court finds appropriate.

I HEREBY CERTIFY THAT on the 20<sup>th</sup> Day of April 2020, I filed the foregoing electronically through the CM/ECF system, which caused SAUSA Thomas Outler to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER  
111 Lomas NW, Suite 501  
Albuquerque, NM 87102  
(505) 346-2489

/s/ *filed electronically*.  
IRMA RIVAS, AFPD  
Attorney for Defendant

*filed electronically*